SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 9 1971
ROBERT SEAVER, CLERK

In the Supreme Court of the United States

NO. 71-511

A. JAY CRISTOL, as a resident and taxpayer of the City of Miami Beach, on his own behalf and in behalf of all others similarly situated, A. JAY CRISTOL, individually, and PALM-HIBISCUS-STAR ISLANDS PROPERTY OWNERS ASSOCIATION, a Florida corporation not for profit,

Petitioners,

vs.

THE CITY OF MIAMI BEACH, a municipal corporation, THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach, THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach, VIDA, LTD., a limited partnership, and MARSHALL WISE, Director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, Member, ABE SOLOSKO, Member, as constituting the Miami Beach Housing Authority,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT

A. J. CRISTOL
Attorney for Petitioners
CRISTOL ROSE & ALDRICH
21 Northeast First Avenue
Miami, Florida 33131

MIAMI REVIEW — 371-4853 — 377-3721

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2-3
Statement	3
Reasons for Granting the Writ	5
Conclusion	10

INDEX TO APPENDIX

	Page
Amended Complaint	1
Answer (City of Miami Beach)	13
Answer (Vida Ltd.)	17
Affidavit	18
Transcript of Clerk, Index	21
Return to Motion for Advancement of Cause with Exhibits Attached	28
Order of Advancement (District Court)	33
Motion for Extension of Time to File Appellant's Brief	35
Affidavit of A. Jay Cristol	37
Order Denying Extension	39
Motion to Extend Time to File Balance of Brief and Motion for Reconsideration and Rehearing	40
Order Accepting and Denying Further Extension	42
Opinion of District Court	43
Denial of Rehearing (District Court)	48
Order Advancing Cause (Supreme Court)	49
Denial of Certiorari	50
Denial of Rehearing (Supreme Court)	51

CITATIONS

Case	Page
Akron C & Y R. Co. v. U. S., 261 U.S. 184, 43 S.Ct. 270, 67 L.Ed. 605 (1922)	7
Baltimore & O. R. Co. v. United States, 298 U.S. 349, 56 S.Ct. 797, 80 L.Ed. 1209 (1936)	8
A. Jay Cristol, et al. v. The City of Miami Beach, 246 So.2d 595 (3rd D.C.A., Fla. 1971)	4
Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)	7
Georgia Power Co. v. Decatur, 281 U.S. 505, 50 S.Ct. 369, 74 L.Ed. 999 (1930)	6
Kwong Hai Chew v. Colding, 344 U.S. 590, 73 S.Ct. 472, 97 L.Ed. 576 (1952)	7
Link v. Wabash R. Co., 370 U.S. 625, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)	7
Railroad Commission of Calif. v. Pacific Gas & Electric, 302 U.S. 388, 58 S.Ct. 334, 82 L.Ed. 319 (1937)	7
Redman v. Kyhe, 76 Fla. 79, 80 So. 300 (1919)	7
Ryan's Furniture Exchange v. McNair, 120 Fla. 109, 162 So. 403 (1935)	7

OTHER CITATIONS

16 Am.Jur.2d, § 579, page 984	8
16A, CJS, § 622, page 825	9

in the
Supreme Court
of the
United States

NO. _____

A. JAY CRISTOL, as a resident and taxpayer of the City of Miami Beach, on his own behalf and in behalf of all others similarly situated, A. JAY CRISTOL, individually, and PALM-HIBISCUS-STAR ISLANDS PROPERTY OWNERS ASSOCIATION, a Florida corporation not for profit,

Petitioners,

vs.

THE CITY OF MIAMI BEACH, a municipal corporation, THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach, THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach, VIDA, LTD., a limited partnership, and MARSHALL WISE, Director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, Member, ABE SOLOSKO, Member, as constituting the Miami Beach Housing Authority,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT

Petitioners, A. JAY CRISTOL, et al., pray that a Writ of Certiorari issue out of this Court to review the judgment of the District Court of Appeal of Florida, Third District, entered in the above entitled case.

OPINION BELOW

The opinion of the Court below (A-43) is reported at 246 So.2d 595.

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District, was entered on April 8, 1971. (A-43) A timely Petition for Rehearing was denied on April 30, 1971. (A-48) A Petition for Certiorari was then filed with the Supreme Court of Florida on May 21, 1971, and was den.ed on June 10, 1971. (A-50) A Motion for Rehearing was filed on June 24, 1971, and was denied on July 12, 1971. (A-51) The jurisdiction of this Court is involved under 28 U.S.C., § 1257 (3).

QUESTIONS PRESENTED

WHETHER THE FAILURE OF THE LOWER COURT TO OPEN OR OTHERWISE CONSIDER THE SEALED ENVELOPE CONTAINING THE DEPOSITIONS OF DEFENDANTS, ABE SOLOSKO AND RUTH B. ROULEAU, ON FILE PRIOR TO THE ENTRY OF SUMMARY JUDGMENT CONSTITUTED A DENIAL OF DUE PROCESS OF LAW?

WHETHER THE DENIAL OF A CONTINUANCE AT A HEARING ON SUMMARY JUDGMENT TO A PARTY WHO, UPON TIMELY AND EFFICACIOUS AFFIDAVIT, HAS ALLEGED THE EXISTENCE OF ADDITIONAL AVAILABLE EVIDENTIARY PROOF ESTABLISHING A MATERIAL FACT IN ISSUE RENDERS SAID HEARING COLORABLE AND ILLUSIVE JUSTICE AND CONSTITUTES A DENIAL OF DUE PROCESS OF LAW?

STATEMENT

On August 4, 1970, Petitioners filed an Amended Complaint seeking to enjoin the City of Miami Beach from conveying certain public lands to a private developer. Petitioners alleged that the transfer involved an unlawful and inadequate consideration.

Subsequent to the filing of the Complaint, Petitioners moved to depose several of the defendants. The Petitioners succeeded in deposing defendants, Abe Solosko and Ruth B. Rouleau. Their depositions were placed in a sealed envelope and were filed with the Circuit Court on November 20, 1970, for use in the forthcoming summary judgment decision.

Four other defendants, all of whom were members of the Housing Authority which supported the conveyance, failed without cause to appear for noticed depositions on October 20, 1970. Petitioners re-noticed and deposed the four absent defendants. However, said depositions could not be transcribed and submitted before the hearing on summary judgment.

Petitioners filed an affidavit (A-18) stating that due to the proximity of the re-noticed depositions and the hearing on summary judgment the depositions could not be transcribed in time for the hearing. Petitioners moved for a continuance to allow the reporter time to transcribe the depositions and submit them to the court. Said continuance was denied by the court.

In addition, while on file prior to the entry of Summary Judgment, the Circuit Court failed to open the sealed envelope containing the depositions of Solosko and Rouleau which had theretofore been filed with the Clerk. The Circuit Court did not consider the depositions alleged by the Petitioners to prove a material fact at issue.

The court entered Summary Judgment against Petitioners on November 24, 1970, without ever having considered the depositions proffered by the Petitioners. Plaintiff's Motion for Rehearing was denied on January 18, 1971, and the seals on the envelopes remained unbroken. (A-27, Index to transcript)

Petitioners appealed to the District Court of Appeal of Florida, Third District. On April 8, 1971, the District Court affirmed the lower court decision. **A. Jay Cristol, et al. v. City of Miami Beach, et al.**, 246 So.2d 595 (3rd D.C.A., Fla. 1971).

After denial of rehearing the Petitioners petitioned the Supreme Court of Florida to grant a Writ of Certiorari to the Third District Court. Petitioners first raised the question of denial of due process in the initial appeal from the Circuit Court to the District Court of Appeal,

Third District, and thereafter in the Petition for Certiorari filed with the Supreme Court of Florida. Petitioners again raised the denial of due process question. (See Third District Court opinion specifically ruling thereon. (A-43)

The Supreme Court of Florida denied Certiorari on June 10, 1971. A timely Petition for Rehearing was filed by Petitioners on June 24, 1971, and was denied on July 12, 1971.

The United States of America was dismissed as a party to the suit (A-23) at its request upon consent of Petitioners. (A-23, Index to transcript)

REASONS FOR GRANTING THE WRIT

The Third District Court of Appeal's decision below affirming the Summary Judgment against Petitioners has deprived the Petitioners of their rights without a full and fair hearing and is in direct violation of the Fourteenth Amendment guarantee of due process of law.

Today is the era of dissatisfaction with government at every level. People are estranged from government. Some have taken to change the present situation by planting bombs and rioting in the streets. Others have attempted to work within the system by use of the courts. Unless the courts are available to the people for a full and fair hearing of grievances against government, the people will have their redress of grievances by other means.

This case is a classic example of the tendency of state courts to accept as right and rubber stamp any municipal action with total disregard to fairness and due process of law to citizens who go to court to question a municipal, county or state action.

In this case the District Court of Appeal entered a three page opinion only six (6) days after oral argument, and the opinion itself is without a single citation of a Florida or federal case.

Because a city was the principal defendant, the case was rushed from amended complaint to summary judgment in 108 days. The appeal was accelerated through the District Court of Appeal, and thereafter a denial of rehearing in the Supreme Court of Florida was entered on July 12, 1971. The total time was less than a year for processing through the trial court and two appellate courts. The Florida courts raced roughshod over the complaining citizens to enter final orders in favor of the city without allowing time for the citizens to prepare their case and refusing to even look at the evidentiary materials of the citizens placed in the court file.

The guarantee of due process of law is embodied in the Fifth and Fourteenth Amendments to the federal constitution. It has two aspects, procedural and substantive. Both are safeguarded by the Fourteenth Amendment against deprivation by the states. **Georgia Power Co. v. Decatur**, 281 U.S. 505, 50 S.Ct. 369, 74 L.Ed. 999 (1930).

As concerns the instant case, Petitioners allege the deprivation of procedural due process. Fundamental to

the concept of procedural due process is the opportunity to be heard. **Goldberg v. Kelly**, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). In **Link v. Wabash R. Co.**, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 737 (1962), it was stated:

> The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the rights for which the constitutional protection is invoked.

A hearing which conforms with the constitutional mandate of due process of law must be full and fair. **Kwong Hai Chew v. Colding**, 344 U.S. 590, 75 S.Ct. 472, 97 L.Ed. 576 (1952); **Railroad Commission of Calif. v. Pacific Gas & Electric**, 302 U.S. 388, 58 S.Ct. 334, 82 L.Ed. 314 (1937).

In **Akron C & Y R. Co. v. U.S.**, 261 U.S. 184, 43 S.Ct. 270, 67 L.Ed. 605 (1922), it was stated:

> A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken.

In Florida, the Supreme Court of Florida has ruled repeatedly that in observing due process of law, the opportunity to be heard must be full and fair, not merely colorable or illusive. **Redman v. Kyhe**, 76 Fla. 79, 80 So. 300 (1919); **Ryan's Furniture Exchange v. McNair**, 120 Fla. 109, 162 So. 483 (1935).

The right under the due process clause to a full and fair hearing includes the right of the party whose rights are sought to be affected to introduce evidence and have judicial findings based thereon. **Baltimore & O. R. Co. v. United States,** 298 U.S. 344, 80 L.Ed. 1209, 56 S.Ct. 797 (1936); 16 Am. Jur. 2d, § 579, page 984.

In the present case the Petitioners have raised two issues of deprivation of due process of law.

The Petitioners first point to the failure of the lower court before entry of Summary Judgment to open the sealed envelope containing the depositions of two defendants and consider the material therein. (A-27, Index to transcript)

Under the concepts of full and fair hearing as espoused within the due process clause, the parties must be granted an ample opportunity to show the propriety or impropriety of the step asked to be taken. **Akron C & Y R. Co., supra.** If the court fails to consider the argument and proffered materials of a party, how can it be said that he has had a fair and ample opportunity? Such actions render hearings an empty formality. Manifestly there can be no hearing where the court refuses to consider the evidence before it.

The second point raised by the Petitioners is the failure of the lower court to grant a continuance so that the Petitioners could transcribe the depositions of four defendants who had previously failed to appear. Such action by the Circuit Court in denying the Petitioners the opportunity to bring forth evidence to establish a material fact in issue constitutes a denial of due process.

The essential aspect of a hearing within the due process clause is fairness. A party has a right to a hearing or an opportunity to be heard before judgment with full opportunity to present all the evidence and argument which the party deems important. 16A, CJS, § 622, page 825. How can this right be reconciled in the instant case with a court which at summary judgment refused to even read the deposition asserted by the Petitioners to prove a material fact at issue. If this procedure is affirmed, due process of law becomes an empty gesture indeed.

CONCLUSION

Accordingly, we respectfully submit that the decision and opinion of the Third District Court of Appeal of Florida through which the Petitioners' Summary Judgment was affirmed be reversed and set aside.

Respectfully submitted,

A. JAY CRISTOL
Attorney for Petitioners

Of Counsel for Petitioners
CRISTOL ROSE & ALDRICH
21 Northeast First Avenue
Miami, Florida 33131

APPENDIX

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

No. 70-9018

A. JAY CRISTOL as a resident and taxpayer of the City of Miami Beach, on his own behalf and in behalf of all others similarly situated,
A. JAY CRISTOL, individually and
PALM-HIBISCUS-STAR ISLANDS PROPERTY OWNERS ASSOCIATION, a Florida corporation not for profit,

vs. **Plaintiffs,**

THE CITY OF MIAMI BEACH, a municipal corporation,
THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach,
THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach,
THE UNITED STATES OF AMERICA,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
VIDA LTD., a limited partnership and
MARSHALL WISE, Director
GERALD K. SCHWARTZ, Member
DAVID TAUB, Member
SHERMAN FAST, Member
ABE SOLOSKO, Member
as constituting the Miami Beach Housing Authority,

Defendants

AMENDED COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER RELIEF FILED PURSUANT TO ORDER OF CIRCUIT COURT DATED THE 30th DAY OF JULY, 1970

Come now the above named plaintiffs, and show this Honorable Court:

1. A. JAY CRISTOL is a resident of the City of Miami Beach, Florida, a tax payer therein and an owner of real property within the City limits of Miami Beach, Florida and proceeds as a plaintiff in a class action pursuant to Florida Rule of Civil Procedure 1.220.

2. A. JAY CRISTOL, an individual, is a citizen of Miami Beach, Florida, and a citizen of the United States of America and brings this suit in this capacity solely as an individual.

3. The PALM-HIBISCUS-STAR ISLAND PROPERTY OWNERS ASSOCIATION is a Florida corporation not for profit, chartered by Order of the Circuit Court in and for Dade County, Florida under Order dated the 1th day of April, 1953 and recorded in Corporation Book 73 Page 19, Public Records, Dade County, Florida.

4. The CITY OF MIAMI BEACH is a municipal corporation organized and existing under the laws of the State of Florida.

5. The HONORABLE JAY DERMER is Mayor of the City of Miami Beach and in such capacity has been

authorized and directed to execute and deliver a deed pursuant to Resolution No. 13015 which is hereinafter referred to.

6. The HONORABLE RUTH B. ROULEAU is City Clerk of the City of Miami Beach and in such capacity has been authorized and directed to execute and deliver a deed pursuant to Resolution No. 13015 which is hereinafter referred to.

7. The UNITED STATES OF AMERICA is a sovereign government and the DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT is a department of that government.

8. VIDA, LTD. is a limited partnership engaging in land development and approved by the Miami Beach Housing Authority in connection with construction of a housing project on certain lands within the City of Miami Beach, more particularly described in Paragraph 11 hereof.

9. MARSHALL WISE, Director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, Member and ABE SOLOSKO, Member claim to be a Housing Authority known as the Miami Beach Housing Authority and are attempting to act in said capacity.

10. On or about April 23, 1970, the City of Miami Beach held a referendum election.

11. At said election, the following question was put to the voters:

QUESTION 1

"Shall the City Council be authorized to convey to the Miami Beach Housing Authority the following parcel of land:

Lots 15 through 20, Block 111, OCEAN BEACH ADDITION NO. 3, Plat Book 2, Page 81, of the Public Records of Dade County, Florida;

for use as Low Rent Housing for the Elderly, under Turnkey contractual procedures authorized by the United States Housing Act of 1937, as amended, either at a nominal consideration, or in no event at more than the value of said land as approved by the Department of Housing and Urban Development and payable upon such terms as may be prescribed by the City Council?"

12. On or about April 29, 1970, the City Council of the City of Miami Beach passed a resolution enumerated Resolution No. 13015, a copy of which is attached hereto and made a part hereof by reference.

13. The Housing Authority of the City of Miami Beach is created pursuant to the provisions of Florida Statute 421.05.

14. All of the members of the Miami Beach Housing Authority have not been properly appointed pursuant to the provisions of Florida Statute 421.05.

15. Chapter 421, Florida Statutes, requires that Housing Authorities created thereunder are created for the purpose of "clearing, replanning and reconstructing slum areas". The purpose of the Miami Beach Housing Authority, as created pursuant to Florida law, is the "clearing, replanning and reconstruction" of slum areas.

16. No clearance of slum areas is involved in the proposed transaction referred to in Resolution No. 13015.

17. In approximately 1967, after many years study and expenditures of public money of approximately $85,000.00, the Planning and Development Commission of the City of Miami Beach proposed a plan for the future development of Miami Beach.

18. The plan aforereferenced was adopted by the City Council of Miami Beach in approximately 1967.

19. The proposal to use the land described in Resolution No. 13015 for the construction of a high rise apartment building violates the Master Plan for the development of the City of Miami Beach as approved by the City Council.

20. The ballot referred to in Paragraph 11 above was erroneous and misleading in the following respects:

(a) A Turnkey project may not be built on land owned by Housing Authority.

(b) The Housing Authority plans to resell the land to a private developer at a price substantially below its actual market value.

(c) The Miami Beach Housing Authority has no funds to use for the purchase of the land from the City of Miami Beach.

(d) Federal money is not authorized for use in land acquisitions in Turnkey projects.

(e) The proposal now pending also includes the construction of meeting halls, public kitchens and health care centers as part of the overall project being negotiated with Vida Ltd., all of which are worthwhile and commendable projects, but none of which were included in the subject matter of the ballot disclosed to the public in the aforesaid election.

21. The City Council has publicly admitted that the actual value of the land described in Resolution No. 13015 is in excess of $435,000.00.

22. Resolution No. 13015 authorizes the sale of said property for the sum of $100,000.00.

23. There is no safeguard in the Resolution or the pending plans to protect the public against the developer from making a profit representing the difference between the $435,000.00 value of the land and the $100,000.00 purchase price and Housing and Urban Development Regu-

lations permit the adjustment of cost breakdown figures to, in fact, permit such a profit to be made by a private investor at taxpayers' expense.

24. The sale price of the property approved by Resolution No. 13015 constitutes a giving away of City of Miami Beach property without adequate consideration and constitutes an act against the best interests of the citizens and taxpayers of the City of Miami Beach resulting in their financial detriment.

25. The City of Miami Beach has never declared the subject land to be surplus and the City in fact has many immediate and pressing needs for the land.

26. The sale of the property to the Housing Authority or to a private developer for a price $335,000.00 below its actual value constitutes a financial detriment to A. Jay Cristol, an individual, and to all of the taxpayers similarly situated, who are residents of the City of Miami Beach.

27. The conveyance of the property at any price deprives the residents of Palm, Hibiscus and Star Islands, who are members of the plaintiff property owners association of the use of the subject property for a bay front park.

28. The conveyance of said land specifically deprives A. Jay Cristol, an individual, and his family and children of the usage of said bay front property as a public park in accordance with the development plan of the City of Miami Beach as approved by the City Council of Miami Beach.

29. All three plaintiffs are financially harmed by the sale of needed property for a price below fair market value to a private investor or otherwise, which will require the acquisition of property to replace this property at a fair market value price.

WHEREFORE, plaintiffs ask this Honorable Court:

1. To take jurisdiction of the parties and the subject matter.

2. To enter a temporary injunction enjoining the City of Miami Beach. the Mayor and the City Clerk of the City of Miami Beach and the Housing Authority of the City of Miami Beach from making any transfer or conveyance of the subject property of Resolution No. 13015 pending the outcome of this litigation.

3. That the Court enter a declaratory judgment pursuant to Chapter 86, Florida Statutes on behalf of all plaintiffs declaring the ballot in the April 23, 1970 referendum election to be misleading and the Resolution No. 13015 purportedly passed in conjunction therewith as not carrying out the purposes of the stated facts on said ballot, that the City of Miami Beach Housing Authority is not properly appointed pursuant to Chapter 421, Florida Statutes and, therefore, a non-existence entity and that the actions contemplated by the City and the Housing Authority are contrary to Chapter 421, Florida Statutes and, therefore, in violation of existing laws and beyond the power of the City and the Housing Authority.

4. After hearing, enter a permanent injunction enjoining the City of Miami Beach, the Mayor and the City Council, the Housing Authority the United States of America and Vida, Ltd. from any further action relative to or in connection with the conveyance of the subject property under Resolution No. 13015.

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 4th day of August, 1970 to Joseph A. Wanick, City Attorney, Attention of Henry A. Edgar, Jr., Assistant City Attorney, 1130 Washington Avenue, Miami Beach, Florida, 33139.

LAW OFFICES
CRISTOL ROSE & ALDRICH
Attorneys for Plaintiffs
21 Northeast First Avenue
Miami, Florida, 33131

By /s/A. Jay Cristol

OFFICE OF CITY ATTORNEY — 1130 WASHINGTON AVENUE — MIAMI BEACH, FLORIDA 33139

RESOLUTION NO. 13015

WHEREAS, the City Council of the City of Miami Beach, Florida, duly called a special election to be held in the City of Miami Beach for the purpose of submitting to the duly qualified electors of the City for their approval or rejection of the proposal that the following parcel of land, to wit:

> "Lots 15 through 20, Block 111, OCEAN BEACH ADDITION NO. 3, Plat Book 2, Page 81, of the Public Records of Dade County, Florida"

should be conveyed to the Miami Beach Housing Authority for use as Low Rent Housing for the Elderly, under Turn-key contractual procedures authorized by the United States Housing Act of 1937, as amended, either at a nominal consideration, or in no event at more than the value of said land as approved by the Department of Housing and Urban Development and payable upon such terms as may be prescribed by the City Council, and

WHEREAS, said special election was duly held on April 23, 1970, and

WHEREAS, the official canvass of the results of said special election showed that the number of votes cast in favor of the proposal was 9,982 and that there were 5,990 votes cast against the said proposal, and

WHEREAS, pursuant to said canvass of the said results of the said election, the City Council of the City of

Miami Beach, Florida, did find, determine and declare that the electors of the City of Miami Beach had duly voted in favor of the said proposal.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI BEACH, FLORIDA, that upon the approval by the Department of Housing and Urban Development of the hereinabove described parcel of land as the site upon which there shall be constructed two hundred (200) living units for use as Low Rent Housing for the Elderly, under Turnkey contractual procedures as hereinabove described, and upon payment to the City of Miami Beach of the sum of one hundred thousand ($100,000.00) dollars upon such terms as shall be mutually agreed upon as the duly determined consideration for said conveyance, the Mayor and the City Clerk be and they are hereby authorized and directed to execute and deliver the said deed at such time and such place as shall be requested or required by the Miami Beach Housing Authority and the official representatives of the Department of Housing and Urban Development.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI BEACH, FLORIDA, that the said deed of conveyance shall be in the usual warranty form, or in such other form as may be desired and requested by the Miami Beach Housing Authority and the Department of Housing and Urban Development, provided, however, that such deed of conveyance shall set forth and provide the condition that the said conveyance is made for use as Low Rent Housing for the Elderly under Turnkey contractual procedures authorized by the United States Housing Act of 1937, as amended, and that upon failure

or default in such condition, said conveyance shall be deemed null and void and the title to said parcel of land shall thereupon revert to the City of Miami Beach.

PASSED and ADOPTED this 29th day of April, 1970.

(signed) Jay Dermer
Mayor

Attest:
(signed) Ruth B. Rouleau
City Clerk-Finance Director

by (signed) Lurana Pohzehl
Deputy

(SEAL)

I, RUTH B. ROULEAU, City Clerk and Finance Director of the City of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and the seal of said City this 21 day of May A.D. 1970.

RUTH B. ROULEAU

City Clerk & Finance Director of the City of Miami Beach, Florida

/s/ Lurana Pohzehl
Deputy City Clerk and Finance Director

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

NO. 70-9018

A. JAY CRISTOL, et al,

Plaintiffs,

-vs-

CITY OF MIAMI BEACH, et al,

Defendants.

ANSWER

(Filed September 24, 1970)

COMES NOW the Defendants, THE CITY OF MIAMI BEACH, a mnuicipal corporation, THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach, THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach, MARSHALL WISE, Director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, Member, ABE SOLOSKO, Member, as constituting the Miami Beach Housing Authority, and answer the Amended Complaint filed herein as follows:

1. Defendants are without knowledge of the allegations of Paragraphs 1, 2 and 3 and therefore deny the same and demand strict proof thereof.

2. Defendants admit the allegations of Paragraph 4.

3. Defendants admit the validity of Resolution No. 13015, and are without knowledge as to the remaining allegations of Paragraphs 5 and 6.

4. Defendants admit the allegations of Paragraph 7.

5. Defendants are without knowledge of the allegations of Paragraph 8 and therefore deny the same.

6. Defendants admit the allegations of paragraph 9 and would further state that the members listed in fact constitute the Miami Beach Housing Authority and are acting in such capacity.

7. Defendants admit paragraphs 10, 11, 12, and 13.

8. Paragraph 14 of the Amended Complaint was struck by Order of this Court.

9. Defendants deny the conclusions of Paragraph 15, and for affirmative response thereto, allege that F.S. 421.03 states as follows:

> "Housing project" shall mean any work or undertaking: (a) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrach the adaption of such area to public purposes, including parks or other recreational or community purposes; or (b) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal prop-

erty for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, commnity, health, recreational, educational, welfare or other purposes; or (c) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith."

10. Defendants deny the allegations of paragraph 16, but again emphasize that clearance of slum areas are not required by law.

11. Defendants are without knowledge of the allegations of paragraphs 17 and 18 and therefore deny the same.

12. Defendants deny the allegations of Paragraph 19.

13. Defendants deny each and every allegation of Paragraph 20 (a) (b) (c) (d) and (e).

14. Defendants are without knowledge of the allegations of paragraph 21 and therefore deny the same.

15. Defendants admit the allegations of Paragraph 22.

16. Defendants deny the allegations of Paragraph 23.

17. Paragraph 24 of the Amended Complaint was struck by Order of this Court.

18. Defendants deny the allegations of Paragraph 25, 26 and 27 and affirmatively state that the Plaintiffs, and each of the Plaintiffs, have no standing to question the wisdom of Defendants with reference to the subject matter alleged in Paragraph 25-27.

19. Defendants deny the allegations of Paragraph 28 and affirmatively state that A. JAY CRISTOL, an individual, and his family and children, do not have standing to question the propriety of said conveyance.

20. Defendants deny the allegations of Paragraph 29.

WHEREFORE, having fully answered the Amended Complaint, Defendants move this Honorable Court to dismiss this cause in that the Plaintiffs have failed to show or prove a violation of a personal interest in the subject matter of the litigation involved herein, and have further failed to prove or show that any alleged violation has resulted from an action the Court has jurisdiction to review, and moves this Honorable Court to dismiss this action with prejudice and tax all costs against the Plaintiffs.

ARONOVITZ, ARONOVITZ & HAVERFIELD
Attorneys for Defendants
The City of Miami Beach, The Honorable Jay Dermer, The Honorable Ruth B. Rouleau and Marshall Wise, Director, etc., constituting the Miami Beach Housing Authority

By /s/ Robert M. Haverfield

ROBERT M. HAVERFIELD
1117 City National Bank Building
Miami, Florida 33130

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

NO. 70-9018 Cullen

A. JAY CRISTOL, etc., et al.

Plaintiffs,

-vs-

THE CITY OF MIAMI BEACH
a municipal corporation, et. al.

Defendants.

ANSWER

(Filed August 25, 1970)

Defendant, VIDA LTD., a limited corporation, by and through its undersigned attorney, for Answer to Plaintiffs' Amended Complaint for Injuction, Declaratory Judgment and Other Relief, say:

1. Defendant, VIDA LTD., deny any and all allegations contained in said Complaint, and demand strict proof thereof.

WHEREFORE, having fully answered Plaintiffs' Complaint against Defendant, VIDA LTD., your Defendant respectfully request this Honorable Court to consider the merits of Defendant's position and thereafter dismiss Defendant, VIDA LTD., as party to this cause with costs to Plaintiffs.

I HEREBY CERTIFY a true copy of the foregoing was mailed to Counsel of Record for Plaintiffs, CRISTOL, ROSE & ALDRICH, 21 N.E. First Avenue, Miami, Florida 33131, this 24th day of August, 1970.

/s/ Murray S. Meyerson

MURRAY S. MEYERSON, ESQ.
Attorney for Defendant
Suite 450 - Seybold Building
Miami, Florida 33132

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

No. 70-9018

A. JAY CRISTOL, et al,

Plaintiffs,

vs.

THE CITY OF MIAMI BEACH, etc., et al,

Defendants.

AFFIDAVIT

(Filed November 9, 1970)

STATE OF FLORIDA
COUNTY OF DADE

This day there personally appeared before me, the undersigned authority, A. JAY CRISTOL, who after first being sworn deposed and said:

1. That he originally noticed the depositions of numerous members of the Housing Authority and others for October 20, 1970 and that by virtue of the failure of the defendants to be deposed receiving notice of deposition from their attorney, they were unavailable for depositions on said date.

2. Said depositions were rescheduled and a substantial number of depositions were taken on Thursday, November 5, 1970 and although the Court Reporter has advised affiant that he has worked diligently on the transcription of said depositions, he has been unable to complete the transcription and filing of same as of the date of this hearing.

WHEREFORE Affiant seeks further relief pursuant to Florida Rule of Civil Procedure 1.510(f).

AFFIANT FURTHER SAYETH NOT.

/s/ A. Jay Cristol
A. JAY CRISTOL

Sworn to and subscribed before
me this 9th day of November, 1970.

/s/ Joan Schneider
Notary Public, State of Florida at Large
My Commission Expires May 19, 1971
Bonded through Fred W. Diestelhorst

ORIGINAL RECORD
OF THE PROCEEDINGS IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA. CIVIL ACTION

NO. 70-9018

IN THE CASE OF

A. JAY CRISTOL as a resident and tax payer of the City of Miami Beach, on his own behalf and in behalf of all others similarly situated, A. JAY CRISTOL, individually and PALM-HIBISCUS-STAR ISLANDS PROPERTY OWNERS ASSOCIATION, a Florida corporation not for profit,

Plaintiffs,

vs.

THE CITY OF MIAMI BEACH, a municipal corporation, THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach, THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach, THE UNITED STATE OF AMERICA, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, VIDA LTD., a limited partnership and MARSHALL WISE, director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, MEMBER, ABE SOLOSKO, Member, as constituting the Miami Beach Housing Authority,

Defendants.

THEREIN LATELY PENDING

INDEX TO TRANSCRIPT

Date of Filing	Kind of Instrument	Pages
Aug. 4, 1970	Amended Complaint for Injunction, Declaratory Judgment and Other Relief filed Pursuant to Order of Circuit Court dated the 30th day of July 1970, together with certified copy of Resolution No. 13015 attached thereto	1-8
Aug. 17, 1970	Motion to Strike or For a More Definite Statement	9-10
Aug. 25, 1970	Answer (VIDA LTD.)	11
Sep. 2, 1970	Interrogatories Pursuant to Florida Rule of Civil Procedure 1. 340	12-14
Sep. 2, 1970	Request for Admission of Facts and Genuineness of Documents Pursuant to Florida Rule of Civil Procedure 1.370	15-16
Sep. 4, 1970	Motion for Summary Judgment	17
Sep. 8, 1970	Notice of Taking Deposition (DAVID TAUB)	18
Sep. 8, 1970	Notice of Taking Deposition (GERALD K. SCHWARTZ)	19

Sep. 8, 1970	Notice of Taking Deposition (SHERMAN FAST)	20
Sep. 8, 1970	Notice of Taking Deposition (EARL STARNES)	21
Sep. 8, 1970	Notice of Taking Deposition (MARSHALL WISE)	22
Sep. 14, 1970	Order	23
Sep. 24, 1970	Answer	24-27
Sep. 30, 1970	Petition to Intervene	28-30
Oct. 13, 1970	Motion to Dismiss	31
Oct. 14, 1970	Copy of Letter dated October 14, 1970 to H. R. MANDELL from Dept. of Housing & Urban Development and Program Reservation attached thereto marked: DEFENDANTS' EX. A FILED 10/13/70 RALPH O. CULLEN, CIRCUIT JUDGE	32-34
Oct. 13, 1970	Motion to Strike	35
Oct. 13, 1970	Consent to Dismissal of United States of America as a Party	36-37
Oct. 13, 1970	Order of Dismissal	38

Oct. 14, 1970	Order	39
Oct. 14, 1970	Order Denying Petition to Intervene	40
Oct. 19, 1970	Motion for Summary Judgment	41
Oct. 19, 1970	Affidavit (HERMAN R. MANDELL) together with certain exhibits attached thereto:	42-59
	I: Copy of Letter dated December 19, 1969 to H. R. Mandell from Dept. of Housing and Urban Development & Program Reservation (Pgs. 44-46)	
	II: Copy of Letter of Intent to Enter Into Contract of Sale of Low-Rent Housing Project to Local Authority and Low-Rent Housing Manual (Pgs. 47-56)	
	III: Letter dated July 17, 1970 to H. R. Mandell from Dept. of Housing & Urban Development (Pgs. 57-59)	
Oct. 26, 1970	Notice of Taking Depositions	60

Oct. 28, 1970	Affidavit (WILLIAM A. INGRAHAM)	61-62
Oct. 28, 1970	Chapter 70-387, THE LAWS OF FLORIDA	63
	Copy of LOW-RENT HOUSING TURNKEY HANDBOOK RHA 7420.1	64-75
	Certification	76
Nov. 5, 1970	Motion to Produce	77-78
Nov. 5, 1970	Affidavit (A. JAY CRISTOL) together with copy of Letter dated October 19, 1970 to A. J. CRISTOL from Neil C. Knox (DEPT. OF HOUSING & URBAN DEVELOPMENT) attached thereto	79-83
Nov. 9, 1970	Exhibits to Deposition of HERMAN R. MANDELL	84-88
	Copy of Letter dated November 5, 1970 to Jay Cristol from Herman R. Mandell (Pg. 85)	
	Letter dated October 23, 1970 to H. R. Mandell from James W. Mills (Pg. 86)	

	Copy of Confirmation Teletype (Pg. 87)	
	Letter dated November 3, 1970 to H. R. Mandell from JAMES W. MILLS (Pg. 88)	
Nov. 6, 1970	Defendant's Answers to Interrogatories	89-91
Nov. 9, 1970	Affidavit (A. JAY CRISTOL)	92-93
Nov. 16, 1970	Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment together with copy of clipping from Nov. 15, 1970 "THE MIAMI HERALD" attached thereto"	94-100
Nov. 23, 1970	Objection to Defendant's Memorandum of Law	101
Nov. 24, 1970	Order Granting Motion for Summary Judgment	102
Nov. 24, 1970	Order Denying Motion to Produce	103
Dec. 1, 1970	Motion for Rehearing	104-105

Dec. 7, 1970	Amendment to Motion for Rehearing together with copy of Affidavit of A. JAY CRISTOL attached thereto	106-110
Jan. 19, 1970	Order Denying Motion for Rehearing and Amendment to Motion for Rehearing	111
Feb. 26, 1970	Motion to Extend Time for Filing Assignment of Error and Designation of Record	112
Nov. 20, 1970	UNOPENED Envelope Containing Depositions of ABE SOLOSKOW and RUTH B. ROULEAU	113
Dec. 7, 1970	UNOPENED Envelope Containing Depositions of: EARL STARNES SHERMAN FAST HERMAN R. MANDELL GERALD SCHWARTZ DAVID TAUB MARSHALL WISE	114

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

No. 71-172

DADE COUNTY CIRCUIT COURT CASE

No. 70-9018

A. JAY CRISTOL, et al,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

RETURN TO MOTION FOR ADVANCEMENT OF CAUSE

Come now the Appellants, by and through their undersigned attorneys, and respectfully show this Court in return to the Appellee's Motion to advance this cause:

1. That assuming, but not admitting each of the factual matters alleged in Appellee's Motion for Advancement, that the Miami Beach Housing Authority has publicly announced that they have full authority to proceed

with the particular housing project which is the subject matter of this suit, and said statements have been reprinted in the local newspapers. (See copies of Miami Herald, Page 4C Friday, January 29, 1971 and The Reporter, Section A-Page 5, Sunday, Januray 31, 1971 attached hereto and incorporated herein as allegations of the Appellant in support of this return)

2. That the subject matter of this law suit relates only to one site for one housing project and in no way affects the operation of the existing housing projects by the local housing authority or the implementation of any other housing projects any place in the City of Miami Beach and merely seeks to prevent the sale of a two acre bayfront park site to a private developer for an inadequate consideration in order to permit said developer to develop and resell said particular project back to the City at a profit.

3. At the present time, the press of work and commitments in the offices of counsel for Appellants is such that it will hardly be possible to complete the preparation and filing of this appeal within the time period usually prescribed by virtue of the fact that there are a substantial number of points on appeal, each of which must be considered.

WHEREFORE, in view of the admissions of the Housing Authority heretofore indicated that this appeal will in no way delay the project and in view of the other facts and circumstances and conditions hereof, Appellants respectfully submit that there is no good cause shown for the advancement of this cause, while such advancement would work an undue hardship and prejudice on Appellants herein.

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 2nd day of March, 1971 to Joseph A. Wanick, Esquire, 1130 Washington Avenue, Miami Beach, Florida; Aronovitz, Aronovitz and Haverfield, Esquires, 117 City National Bank Building, Miami Florida and Murray S. Meyerson, Esquire, Suite 450 Seybold Building Miami, Florida.

LAW OFFICES
CRISTOL ROSE & ALDRICH
Attorneys for Appellants
21 Northeast First Avenue
Miami, Florida, 33131

By /s/ A. Jay Cristol
A. JAY CRISTOL

4-C THE MIAMI HERALD Fri., Jan. 29, 1971.

Lawsuit Won't Delay Low-Rent Project

Construction of Miami Beach's $3-million low-rent housing project for the elderly won't be delayed if a lawsuit challenging the project is appealed, the Miami Beach Housing Authority was told Thursday.

Municipal planner Paul Stutzman, president of Vida, Ltd., reported to authority members that his company is preparing preliminary architect's drawings for the 200-family, 14-story highrise.

Ground-breaking for the project to be built on the bayfront at the south tip of the Beach is scheduled for Aug. 1.

A suit brought against the project by Beach resident and attorney A. Jay Cristol was dismissed in Circuit Court last month.

Cristol has until mid-February to appeal that decision.

An appellate court ruling could take as long as six months, but federal housing officials in Atlanta have said the Beach project can proceed as a result of the Circuit Court decision, Housing Authority member Abe Solosko said.

THE REPORTER-Sunday, January 31, 1971. Section A-Page 5.

Housing Project Still Has Green Light.

Waiver of the preliminary plan review of the 200 unit Bayside low-cost housing for the elderly was turned down by HUD in Atlanta, in a decision that will slow down the project slightly.

Paul Stutsman, president of Vida, Ltd., builder of the 14-story low-rent housing, told the Miami Beach Housing Authority that only HUD internal auditing officials disagreed with the original plan to skip that step.

This means that HUD will have to see detailed drawings of the plans for the housing project before a preliminary contract of sales is signed.

Stutsman also told the Authority that any appeal of the lawsuit filed by Jay Cristol and dismissed last month in Circuit Court would not interfere with the completion of the project.

Cristol has until Feb. 18 to appeal his lawsuit, but HUD continues to say that the project can proceed as planned regardless of any litigation.

Vida, Ltd. has projected an Aug. 1 start of construction with completion of the project one year later.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

JANUARY TERM, A.D. 1971

THURSDAY, MARCH 4, 1971

CASE NO. 71-172

A. JAY CRISTOL, et al,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

This cause having come on to be heard on a motion for advancement, the court having determined in the oral presentation that the judgment here under review is a final summary judgment, and being otherwise duly advised in the premises, it is thereupon.

ORDERED AND ADJUDGED as follows:

1. That the Motion for Advancement be and the same is hereby granted.

2. That the appellants be and they are hereby directed to file their assignments of error and directions to the Clerk not later than March 10, 1971.

3. That the appellants be and they are hereby directed to file and serve a copy of their brief not later than March 24, 1971.

4. That the appellees be and they are hereby directed to file their briefs not later than March 29, 1971.

5. That the Clerk of the Trial Court be and he is hereby directed to file such record on appeal as may be directed with this court no later than March 29, 1971.

6. That this cause be and the same is hereby set for oral argument on Friday, April 2, 1971, commencing at 10:30 o'clock A.M., each side being allotted twenty (20) minutes for their oral presentation.

7. That any reply brief filed by the appellants shall be deliverd to this court and opposing counsel prior to the time set for oral argument.

A True Copy

ATTEST:

WILLIAM P. CARTER

Clerk District Court of
Appeal, Third District

By (Signature illegible)

Chief Deputy Clerk

cc: Aronovitz, Aronovitz & Haverfield
Cristol, Rose & Aldrich
Joseph A. Wanick
Murray S. Meyerson
E. B. Leatherman

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

No. 71-172

A. JAY CRISTOL, et al,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

MOTION FOR EXTENSION OF TIME
TO FILE APPELLANTS' BRIEF

Come now the Appellants by and through their undersigned attorneys and show this Honorable Court:

1. That this Court's Order requires Appellants' brief to be filed not later than March 24, 1971.

2. That as of March 23, 1971, counsel for Appellants has found it physically impossible to complete the preparation of said brief.

3. That the Record-on-Appeal in this cause was completed by the Clerk and the copy of the index picked up by Appellants' counsel on Friday, March 19, 1971 at approximately 3:25 P.M.

4. That Appellants do not believe it possible to complete and file its brief before March 31, 171, although Appellants' counsel will make every effort to complete and file same sooner.

WHEREFORE, Appellants move this Honorable Court extend the time for filing Appellants' brief through and including March 31, 1971.

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 23rd day of March, 1971 to Aronovitz, Aronovitz & Haverfield, Esquires, 117 City National Bank Bldg. Miami, Florida and Murray S. Meyerson, Esquire, Suite 450 Seybold Building, Miami, Florida.

LAW OFFICES
CRISTOL ROSE & ALDRICH
Attorneys for Appellants
21 Northeast First Avenue
Miami, Florida, 33131

By A. JAY CRISTOL

A. JAY CRISTOL

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

No. 71-172

A. JAY CRISTOL, et al,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

AFFIDAVIT OF A. JAY CRISTOL

STATE OF FLORIDA:
COUNTY OF DADE:

This day there personally appeared before me, the undersigned authority, A. JAY CRISTOL, who after first being duly sworn deposed and said:

1. He is attorney of record for the Appellants in this cause.

2. That he has diligently attempted to complete the brief required in this cause within the time set by order of this Court dated March 4, 1971.

3. That if the Court is not satisfied with said diligence, he requests an evidentiary hearing to establish the impossibility of performance within this time to the Court.

4. That he verily believes that Appellants and Appellants' counsel are being unfairly treated without cause for the convenience of a private developer.

AFFIANT FURTHER SAYETH NOT.

A. JAY CRISTOL

A. JAY CRISTOL

Sworn to and subscribed before me this 23rd day of March, 1971.
/s/ Joan Schneider

Notary Public, State of Florida
(Seal Notary Public)

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 23rd day of March, 1971 to Aronovitz, Aronovitz & Haverfield, Esquire, 117 City National Bank Building, Miami, Florida and Murray S. Meyerson, Esquire, Suite 450 Seybold Building, Miami, Florida.

LAW OFFICES
CRISTOL ROSE & ALDRICH
Attorneys for Appellants
21 Northeast First Avenue
Miami, Florida, 33131

By A. JAY CRISTOL

A. JAY CRISTOL

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

JANUARY TERM, A.D. 1971

THURSDAY, MARCH 25, 1971

CASE NO. 71-172

A. JAY CRISTOL, et al,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

Upon consideration of appellant's motion for an extension of time to file appellants' brief, it is ordered that said motion is hereby denied.

Appellant's motion to enlarge oral argument time to fourty-five (45) minutes is denied.

A True Copy

ATTEST:

/s/William P. Carter
Clerk District Court of
Appeal, Third District

(SEAL)

cc: A. Jay Cristol
Aronovitz, Aronovitz & Haverfield
Murray S. Meyerson

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

JANUARY TERM, A. D. 1971

CASE NO. 71-172

A. JAY CRISTOL, et al,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

MOTION TO EXTEND TIME TO FILE BALANCE OF BRIEF AND MOTION FOR RECONSIDERATION AND REHEARING

Appellant moves this Court for leave to file the balance of his Brief on Monday, March 29, 1971 and in support thereof would state that the attorney for the Appellant due to his work schedule is unable to file said Brief on the date of the notice of the denial of Appellant's Motion to Extend Time for the filing thereof, which notice was received on Friday, March 26, 1971.

Appellant further moves for Reconsideration and Rehearing on his Motion for Extension of Time to file Brief.

WE HEREBY CERTIFY that a true copy of the foregoing was hand delivered to; Aronovitz, Aronovitz & Haverfield, Esquires, 117 City National Bank Building, Miami, Florida and to Murray S. Meyerson, Suite 450 Seybold Building, Miami, Florida, Attorneys for Appellees, this 26th day of March, 1971.

LAW OFFICES
CRISTOL ROSE & ALDRICH
14th Floor Dade Federal Building
21 Northeast First Avenue
Miami, Florida 33131

By: /s/ Ross A. McVoy

Attorneys for Appellants

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

JANUARY TERM, A.D. 1971

WEDNESDAY, MARCH 31, 1971

CASE-NO. 71-172

A. JAY CRISTOL, et al,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

Upon consideration of appellants' motion to extend time to file balance of brief and motion for reconsideration and rehearing, it is ordered that the portion of appellants' brief submitted, is accepted and filed as of March 26, 1971, and any further extension of time is denied.

A True Copy

ATTEST:

/s/ William P. Carter
Clerk District Court of
Appeal, Third District

cc: Cristol Rose & Aldrich
Aronovitz, Aronovitz & Haverfield
Murray S. Meyerson

(SEAL)

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1971

CASE NO. 71-172

A. JAY CRISTOL, et al.,

Appellants,

vs.

THE CITY OF MIAMI BEACH, et al.,

Appellees.

Opinion filed April 8, 1971.

An Appeal from the Circuit Court for Dade County, Ralph O. Cullen, Judge.

Cristol, Rose & Aldrich, for appellants.

Joseph A. Wanick, City Attorney; Aronovitz, Aronovitz & Haverfield, for appellees.

Before PEARSON, C.J., and CHARLES CARROLL and BARKDULL, JJ.

PER CURIAM.

This is an appeal from a summary final judgment for the defendants, The City of Miami Beach, the Honorable Jay Dermer, as Mayor of the City of Miami Beach, the Honorable Ruth P. Rouleau, as City Clerk of the City of Miami Beach, VIDA, Ltd., a limited partnership and Marshall Wise, Director, Gerald K. Schwartz, member, David Taub, member, Sherman Fast, member, Abe Solosko, member, as constituting the Miami Beach Housing Authority, all of whom are appellees in this case. The appellants are a resident and tax payer of the City of Miami Beach, A. J. Cristol, and the Palm-Hibiscus-Star Islands Property Owners Association. The summary judgment was granted by the court after the taking of depositions and the filing of affidavits. Upon the motion of the apellees, this appeal was expedited by the shortening of the time for the filing of the record and the briefs and the oral argument was set for an early date. All of these scheduled events have now occurred and we have expedited the filing of this decision because of the nature of the subject matter involved.

The complaint sought to enjoin the City of Miami Beach from conveying certain public lands to the defendant-appellee, VIDA, Ltd. The pleadings, depositions and affidavits on file make it clear that the public lands were to be conveyed for the purpose of the erection thereon of an urban housing development under the regulations of the Department of Housing and Urban Development of the United States. The trial judge reached the conclusion that there were no genuine issues of material fact and that the defendants were entitled to a judgment as a matter of law.

Appellants have presented nine points on appeal. The main thrust of the appeal is that the proposed sale is illegal because it is not in compliance with F.S. § 167.77. The pleadings, depositions and affidavits before the trial judge established clearly that the purpose of the conveyance was public in nature. The record shows that under the plan being followed, the property owned by the City will be conveyed first to its own housing authority and from that entity to the developer for a consideration of $100,000.00. Thereafter, the developer will erect in conformity with the regulations of the Department of Housing and Urban Development of the United States, a multiple-unit housing development for the use of the elderly citizens of the community of Miami Beach. It further appears that upon completion of the project, the property encumbered by the mortgage necessary for the financing of the construction and the payment of the fee of the developer will be returned to the City's Public Housing Authority for the purchase price. The housing authority will operate the project and upon the expiration of the forty-year term mortgage, the property will revert to the City. We think that it clearly appears from these facts that transfer of this property is authorized by F.S. § 422.04(2),[1] and that it is for a public purpose under F.S. § 421.03(9).

Appellants' second line of attack is that there are factual matters in issue which preclude entry of summary judgment. We have reviewed each suggested factual issue both as contained in appellants' brief and as presented

[1]"Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding."

upon oral argument and we find that the trial judge correctly found that there were no genuine issues of material fact. We note that the only basis upon which appellants could have been entitled to the injunction they prayed for was the claimed illegality of the transfer. Issues of fact which do not go to the question of the legality of the transfer cannot be said to be material issues.

Appellants' third line of attack argues that some of the members of the Miami Beach Housing Authority do not have the power to act in their official positions. This argument is made upon the basis of an allegation that the appointments of the members were not confirmed by the city council as required by the ordinance creating the authority. While this argument may be effective to question the de jure right of certain of the members of the housing authority to participate in the actions of the authority, it is not sufficient to defeat the de facto existence of the authority. It is a collateral attack upon the acts of the authority and would not, if proven constitute a basis for a holding that the proposed transfer of the City to its housing authority is illegal.

Appellants' last line of attack is that the procedural handling of this case constituted a denial of procedural due process to the plaintiffs and that therefore the judgment should be reversed as a violation of the federal and state constitutions. We find nothing whatsoever in this record to suggest a denial of procedural due process to the appellants. The record does not show the date of the filing of appellants' first complaint but it does show that on August 4, 1970, an amended complaint for injunction was filed. The next several months were taken up in pleadings and

discovery. The motion for summary judgment which was eventually granted was filed in September, 1970, and the hearing thereon was held on the 9th day of November, 1970. Final judgment after the denial of motion for rehearing was not entered until January 18, 1971. Appellant was granted every opportunity to engage in discovery and full hearings were held.

We have considered the other points presented and are not convinced of error. The pleadings, depositions and affidavits together with the admissions on file demonstrated that there was no genuine issue of material fact to be tried and that the appellants were entitled to a judgment as a matter of law. The trial court properly entered the summary judgment appealed.

In view of the fact that this appeal has been expedited and because of the importance for an early disposition of this appeal, the time for the filing for petitions for rehearing in this cause is shortened to five days from the date of the filing of this decision.

Affirmed.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A. D. 1971
FRIDAY, APRIL 30, 1971

CASE NO. 71-172

A. JAY CRISTOL, Et al.,

Appellants,

vs.

THE CITY OF MIAMI BEACH, etc., et al.,

Appellees.

Ccunsel for appellants having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy
ATTEST:

/s/ William Lasko
Clerk District Court of
Appeal, Third District

cc: Cristol, Rose & Aldrich
Aronovitz, Aronovitz & Haverfield

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA)

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1971

WEDNESDAY, JUNE 2, 1971

CASE NO. 41,152

A. JAY CRISTOL, ET AL.,

Petitioners,

vs.

THE CITY OF MIAMI BEACH, ET AL.,

Respondents.

Respondents' motion to advance cause is granted.

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

cc: Honorable Wm. K. Chester
Messrs. Cristol, Rose & Aldrich

(SEAL)

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1971
THURSDAY, JUNE 10, 1971

CASE NO. 41,152
DISTRICT COURT OF APPEAL, THIRD DISTRICT

A. JAY CRISTOL, et al.,

Petitioners,

v.

THE CITY OF MIAMI BEACH, et al.,

Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, C.J., ERVIN, BOYD, McCAIN and DEKLE, JJ., concur.

A True Copy
TEST:
/s/ Sid J. White
Sid J. White
Clerk Supreme Court.

cc: Honorable William P. Carter, Clerk
Honorable E. B. Leatherman, Clerk
Honorable A. Jay Cristol
Messrs. Aronovitz, Aronovitz & Haverfield

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM A.D. 1971

MONDAY, JULY 12, A.D. 1971

CASE NO. 41,152

A. JAY CRISTOL, ET AL,

Petitioners

vs.

CITY OF MIAMI BEACH, ET AL,

Respondents

On consideration of the Petition for Rehearing filed by Attorneys for Petitioners,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A TRUE COPY,

TEST:

/s/ Sid J. White
SID J. WHITE
CLERK SUPREME COURT

(I HAVE TODAY MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, ORDER OF JUNE 10, 1971, IN THE ABOVE CAUSE)

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 30 1971
ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-511

A. JAY CRISTOL, as a resident and taxpayer of the City of Miami Beach, on his own behalf and in behalf of all others similarly situated, A. JAY CRISTOL, individually, and PALM-HIBISCUS-STAR ISLANDS PROPERTY OWNERS ASSOCIATION, a Florida corporation not for profit,

Petitioners,

vs.

THE CITY OF MIAMI BEACH, a municipal corporation, THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach, THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach, VIDA, LTD., a limited partnership, and MARSHALL WISE, Director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, Member, ABE SOLOSKO, Member, as constituting the Miami Beach Housing Authority,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

WILLIAM K. CHESTER
Attorney for Respondents
Aronovitz, Aronovitz & Haverfield
1117 City National Bank Building
Miami, Florida 33130

MIAMI REVIEW — 371-4853 — 377-3721

INDEX

	Page
STATEMENT OF CASE	2
QUESTIONS PRESENTED	3
REASONS FOR NOT GRANTING WRIT OF CERTIORARI	4
CONCLUSION	6
CERTIFICATE OF SERVICE	7

in the
Supreme Court
of the
United States

OCTOBER TERM, 1971

No. 71-511

A. JAY CRISTOL, as a resident and taxpayer of the City of Miami Beach, on his own behalf and in behalf of all others similarly situated, A. JAY CRISTOL, individually, and PALM-HIBISCUS-STAR ISLANDS PROPERTY OWNERS ASSOCIATION, a Florida corporation not for profit,

Petitioners,

vs.

THE CITY OF MIAMI BEACH, a municipal corporation, THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach, THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach, VIDA, LTD., a limited partnership, and MARSHALL WISE, Director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, Member, ABE SOLOSKO, Member, as constituting the Miami Beach Housing Authority,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

STATEMENT OF CASE

The Respondents adopt as their statement of the case the District Court of Appeal's findings as set forth in its decision dated April 8, 1971, which is found in the Petitioners' Appendix, page 44, which sets forth:

> "This is an appeal from a summary final judgment for the defendants, The City of Miami Beach, The Honorable Jay Dermer, as Mayor of the City of Miami Beach, the Honorable Ruth P. Rouleau, as City Clerk of the City of Miami Beach, VIDA, Ltd., a limited partnership and Marshall Wise, Director, Gerald K. Schwartz, member, David Taub, member, Sherman Fast, member, Abe Solosko, member, as constituting the Miami Beach Housing Authority, all of whom are appellees in this case. The appellants are a resident and taxpayer of the City of Miami Beach, A. J. Cristol, and the Palm-Hibiscus-Star Islands Property Owners Association. The summary judgment was granted by the court after the taking of depositions and the filing of affidavits. Upon the motion of the appellees, this appeal was expedited by the shortening of the time for the filing of the record and the briefs and the oral argument was set for an early date. All of these scheduled events have now occurred and we have expedited the filing of this decision because of the nature of the subject matter involved.
>
> The complaint sought to enjoin the City of Miami Beach from conveying certain public lands to the defendant-appellee, VIDA, Ltd. The pleadings, depositions and affidavits on file make it clear that the public lands were to be conveyed

for the purpose of the erection thereon of an urban housing development under the regulations of the Department of Housing and Urban Development of the United States. The trial judge reached the conclusion that there were no genuine issues of material fact and that the defendants were entitled to a judgment as a matter of law."

QUESTIONS PRESENTED

The Respondents recognize that the only questions presented by the writ of certiorari are found on pages 2 and 3 of Petitioners' Brief which set forth:

I

"WHETHER THE FAILURE OF THE LOWER COURT TO OPEN OR OTHERWISE CONSIDER THE SEALED ENVELOPE CONTAINING THE DEPOSITIONS OF DEFENDANTS, ABE SOLOSKO AND RUTH B. ROULEAU, ON FILE PRIOR TO THE ENTRY OF SUMMARY JUDGMENT CONSTITUTED A DENIAL OF DUE PROCESS OF LAW?

II

WHETHER THE DENIAL OF A CONTINUANCE AT A HEARING ON SUMMARY JUDGMENT TO A PARTY WHO, UPON TIMELY AND EFFICACIOUS AFFIDAVIT, HAS ALLEGED THE EXISTENCE OF ADDITIONAL AVAILABLE EVIDENTIARY PROOF ESTABLISHING A MATERIAL FACT IN ISSUE RENDERS SAID HEARING COLORABLE AND ILLUSIVE JUSTICE AND CONSTITUTES A DENIAL OF DUE PROCESS OF LAW?"

REASONS FOR NOT GRANTING THE WRIT OF CERTIORARI

The Petitioners allege on page 9 of the Petition that the Court, which entered a summary judgment, refused to even read the deposition asserted by the Petitioners to prove a material fact at issue.

The Petition and Appendix is silent and does not show when, where or how the trial court refused to read the deposition and Question I, as presented by the Petitioners, is therefore without any facts to back up the allegations of the Petitioners. Surely a capable and resourceful attorney such as the attorney for the Petitioners would have demanded the Judge of the lower court to open and read the depositions at the time of the summary judgment if he felt they were crucial to his case.

Question II, presented by the Petitioners, complains of the unfairness of a denial of continuance at a hearing on the summary judgment. This was adequately considered by the appellate court in its review of the complete record on appeal and it concluded the denial was reasonable and the appellate court stated, see Petitioners' Brief, page 46 and 47:

> "Appellants' last line of attack is that the procedural handling of this case constituted a denial of procedural due process to the plaintiffs and that therefore the judgment should be reversed as a violation of the federal and state constitutions. We find nothing whatsoever in this record to suggest a denial of procedural due process to the appellants.

The record does not show the date of the filing of appellants' first complaint but it does show that on August 4, 1970, an amended complaint for injunction was filed. The next several months were taken up in pleadings and discovery. The motion for summary judgment which was eventually granted was filed in September, 1970, and the hearing thereon was held on the 9th day of November, 1970. Final judgment after the denial of motion for rehearing was not entered until January 18, 1971. Appellant was granted every opportunity to engage in discovery and full hearings were held.

We have considered the other points presented and are not convinced of error. The pleadings, depositions and affidavits together with the admissions on file demonstrated that there was no genuine issue of material fact to be tried and that the appellants were entitled to a judgment as a matter of law. The trial court properly entered the summary judgment appealed."

CONCLUSION

We respectfully submit therefor that the Petition for Writ of Certiorari has been filed in this case only to delay the Respondents further in the construction of a much needed housing project for the elderly and low income residents and the Petition should forthwith be denied.

Respectfully submitted,

WILLIAM K. CHESTER
Attorney for Respondents

Of Counsel for Respondents
ARONOVITZ, ARONOVITZ & HAVERFIELD
1117 City National Bank Building
Miami, Florida 33130

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Brief of Respondents in Opposition to Petition for Writ of Certiorari was mailed to CRISTOL, ROSE & ALDRICH, Attorneys for Petitioners, 21 Northeast First Avenue, Miami, Florida 33131, this day of October, 1971.

WILLIAM K. CHESTER